

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

In the outstanding Office Action, the Examiner rejected claims 1-11. By the foregoing amendment, claims 1 and 8-11 have been amended. No new matter is added. Thus, claims 1-11 are pending in this application, of which claims 1 and 8-11 are independent. The rejections are traversed below.

Noted - IDS Considered

The indication (see the List of references cited by applicant and considered by examiner dated February 17, 2009) that the Information Disclosure Statement ("IDS") as filed on April 1, 2008 and references listed therein have been considered is noted with appreciation.

Official Consideration of IDS Requested

On July 22, 2008, Information Disclosure Statements ("IDS"), including one or more forms PTO-1449, PTO/SB/08a and/or PTO/SB/08b, were submitted in this application. Official consideration by the USPTO of any reference listed on such forms, and thus the IDS itself, would be indicated by the Examiner initialing, signing and dating such forms. As of the date of this response, no initialed, signed and dated version(s) of such forms has been made of record, hence the undersigned infers that the IDS has not yet been considered. The undersigned has no reason to believe that this circumstance implies anything other than a minor oversight on the part of the USPTO. Accordingly, official consideration of the IDS is hereby respectfully requested.

Claim Rejection Under 35 U.S.C. §112

Claims 1, 8

Claims 1 and 8 are rejected under 35 U.S.C. §112, second paragraph as being confusing. By the foregoing amendments, the claims have been amended in such a manner that there is a consistency between the matter recited in the preamble of the claim and the matter recited in the body of the claim. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 9

Claim 9 is rejected under 35 U.S.C. §112, second paragraph as being confusing. The Office Action further states that "Specifically, in independent claim 9 and dependent claims indicating structure, means plus function or ..."

However, there are no claims that depend from claim 9. Consequently, the applicant assumes that the expression "and dependent claims" is simply a typographic error and interprets the remarks in the Office Action as solely directed to independent claim 9.

Furthermore, the Office Action describes, in lines 3-5 on page 3, that "In other words, independent claim 1 changes from a statutory class (subject matter), in the form of a system ..." while section 4 of the Office Action is directed to claim 9. The applicant assumes this is a simple clerical error and interprets section 4 of the Office Action is still directed to independent claim 9.

Based on the foregoing interpretations and amendments, claim 9 has been amended in such a manner that there is a consistency between the matter recited in the preamble of the claim and the matter recited in the body of the claim. Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §101

Claims 1, 8

Claims 1 and 8 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject.

The Office Action further states that "for claim (1) 'a determining portion for determining ...', 'an information transmission portion for transmitting ...', and for claim 8 'a determining portion for determining ...' and 'a notification portion for sending ...' represent software".

By the foregoing amendments, claims 1 and 8 have been amended, and no longer include the language in the form rejected to by the Examiner.

Accordingly, withdrawal of the rejection is respectfully requested.

Claim 9

Claim 9 is rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject.

The Office Action further states that "in independent claim 9, the preamble of the claim recites an apparatus indicating structure, means plus function or Hardware, whereas the body of the claim recites data structure or software per se, which is not statutory. Specifically, a determining portion and an information transmission portion as defined in the specification, represent software, not means or Hardware.

However, claim 9 does not recite "a determining portion ..." and "an information transmission portion ...". The applicant assumed this was a simple clerical error and interpreted that "a user registration ...", "an information delivery ...", "a delivery status management ...", and "a delivery status notification ...", as identified in section 4 (pages 2-3) of the Office Action is what is referred to in this case.

By the foregoing amendment, claim 9 has been amended based on this assumption, and no longer include the language in the form rejected to by the Examiner.

Accordingly, withdrawal of the rejection is respectfully requested.

Claim 10

Claim 10 and the dependent claims are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject.

However, there are no claims that depend from claim 10. Consequently, the applicant assumes that the expression "and dependent claims" is simply a typographic error and interprets the remarks in section 8 of the Office Action as solely directed to claim 10.

The Office Action further states that "For example in independent claim 10, the steps of "making a provider information storage ...", "determining whether of not ...", and "transmitting the provision information ...", etc. should individually incorporate a particular machine (computer, apparatus, or hardware per se) ...".

By the foregoing amendments, the claims have been amended to clearly indicate that the operation(s) are tied to for example, "a central processing unit" (i.e., a machine).

Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §102

Claims 1, 4, and 8-11 are rejected under 35 U.S.C. §102(b) as being anticipated by Patel et al. (7,370,004).

Further review of Patel et al. reveals that Patel et al. does not qualify as prior art against this application. This application was filed in the United States on October 7, 2005, claiming benefit of PCT International Application No. PCT/JP2003/004533 having international filing date of April 9, 2003. Patel et al. was filed in the United States on May 4, 2000 but not published before May 6, 2008.

35 U.S.C. § 102(b) states "A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States."

It is respectfully submitted that the date of publication of May 6, 2008 of Patel et al. is not one year prior to the date of application of the present application in the United States, as required by § 102(b).

Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

Claims 3 and 6-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Patel et al. (7,370,004).

As discussed above, Patel et al. does not qualify as prior art against this application, which renders the reason for rejection moot.

At least on page 9 of the outstanding Office Action, the Examiner acknowledges that Patel et al. fails to disclose the feature comprising a movement information obtaining portion for obtaining movement information that indicates a speed and a direction of movement of the user to support the determining portion. However the Examiner makes a conclusory statement regarding the New York City Subway. Applicant respectfully traverses the Examiner's statement because supporting evidence related to the functionality of the claimed invention has not been provided, and request that the Examiner produce authority for the statement.

Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

Claims 2, 3, and 5-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over (Patel et al. (7,370,004)) in view of Taschereau (20040076279).

It is assumed that the statement "Claims 2, 3, and 5-7 are ..." on page 11 of the outstanding Office Action is a typographic error and is meant to refer to "Claims 2 and 5 are ...", instead. The applicant provides argument based on this assumption.

As discussed above, Patel et al. does not qualify as prior art against this application, which renders the reason for rejection moot.

Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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